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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4848 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTKUMAR G SHAH

Versus

BHAVNAGAR MUNICPAL CORPORATION

Appearance:

MR JA SHELAT for Petitioner

MR JR NANAVATI for Respondent No. 1

MR DP JOSHI AGP for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/06/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent Corporation to implement the resolution dated 29-6-1984 Annexure-D and all further actions should be taken in pursuance to nullify the impugned resolution Annexure-D.

2. The petitioner joined in service as Malaria Supervisor on 17-12-1965 in the office of the respondent Corporation. The petitioner was confirmed on the post of Drainage Sub-Inspector on 17-3-1969. The petitioner was entrusted with the additional work apart from the discharge of his regular duties by the Deputy Engineer of the respondent Corporation vide order dated 2-2-1983. According to the petitioner, the additional duties performed by the petitioner were equivalent to the duties of Sr. Sub-Inspector. Hence, the petitioner gave an application dated 12-9-1983 to the respondent Corporation for payment of additional wages and to appoint him on the post of Sr. Sub-Inspector on probation. That application was considered by the Standing Committee of the respondent Corporation on 25-10-1983. The Standing Committee vide order dated 2-2-1984 created post of Sr. Sub-Inspector. The qualification for the said post was S.S.C. pass and experience of 15 years. The petitioner again gave another application dated 6-3-1984 to consider him for the post of Sr. Sub-Inspector. The General Body of the respondent Corporation vide resolution No. 77 dated 29-6-1984 directed to appoint the petitioner on the post of Sr. Sub-Inspector and the qualification of S.S.C. pass was dispensed with by the said resolution. The Commissioner of the respondent Corporation was trying to cancel the aforesaid resolution of the General Body of the respondent Corporation. Therefore, the petitioner has filed the present petition.

3. It is alleged that the impugned action of the respondent Corporation to cancel the resolution dated 29-6-1984 is contrary to law. It is further alleged that the petitioner was performing the duties of the post of Sr. Sub-Inspector which has been created by the General Board of the respondent Corporation. Hence, the Administrator of the respondent Corporation cancelled the resolution. The action of the respondent of cancelling the impugned resolution is violative of the principles of natural justice. It is also stated that under the provisions of Section 53 of the Bombay Provincial Municipal Corporation Act, 1949 (Hereinafter referred to the Act for brevity). The power for appointment has been vested in the Commissioner with the previous sanction of the Standing Committee on condition that every such appointment shall forthwith be reported by the Commissioner to the Corporation and no such appointment shall be renewed on the expiry of the said period of six months without the previous sanction of the Corporation. The power of appointing municipal officers and servants shall vest in the Municipal Chief Auditor and the

Municipal Secretary as the case may be, subject, in either case, to the approval of the Standing Committee unless the said Committee in any particular case of class of cases dispenses with his requirement.

4. In the present case, General Body of the respondent Corporation on the recommendation of the Standing Committee has dispensed with the educational qualification u/s 53 (2) of the Act. Hence, the Commissioner of the respondent Corporation had no power or authority or right to cancel the resolution as aforesaid. There is no provision in the Act by which the statutory powers can be exercised by the Standing Committee. The petitioner was discharging his duties as Sr. Sub-Inspector pursuant to the order dated 2-2-1983 passed by the Deputy Engineer of the respondent Corporation and he had discharged his duty to the utmost satisfaction of the respondents. Thus, Commissioner of respondent Corporation has no power to cancel the impugned resolution which was passed for appointment of the petitioner on the post of Sr. Sub-Inspector.

5. The affidavit-in-reply has been filed on behalf of the respondents no. 1 and 2, wherein it is denied that the duties performed by the petitioner were equivalent to the duties of the Sr. Sub-Inspector. It was admitted that the petitioner has made the application on 12-9-1983 to the respondent Corporation for conferring higher grade after creating the post of Sr. Sub-Inspector. It is also admitted that qualification which was required for holding post of Sr. Sub-Inspector was S.S.C. pass and by the resolution No. 132 dated 2-2-1984 the respondent Corporation resolved whereby the respondent Corporation laid down qualifications for the post of Sr. Sub-Inspector. Said resolution also requires that the candidate should have passed S.S.C. examination. The respondent Corporation passed the resolution dated 29-6-1984 whereby it was resolved that as per the resolution passed by the Standing Committee dated 7-6-1984 the petitioner should be appointed as Sr. Sub-Inspector on the newly created post. But no order appointing the petitioner on the post of Sr. Sub-Inspector has been passed by the respondent Corporation. It is also stated that the term of the General Body was to expire on 30-6-1984. The aforesaid resolution was passed on 29-6-1984. After expiry of term of the general body of the respondent Corporation, an administrator was appointed and the matter was reconsidered by the administrator of the respondent Corporation on 05-09-1984. The administrator of the respondent Corporation resolved that the petitioner may

have vide experience of work as Sr. Sub-Inspector but the requisite qualification for that post cannot be dispensed with and the petitioner is required to pass S.S.C. Examination. The administrator has power to consider and to pass appropriate orders and since the General Body of the respondent Corporation passed the resolution dated 29-6-1984 when the term was to expire on 30-6-1984. The matter was reconsidered by the administrator on 5-12-1984 and decided that the requisite qualification for the post of Sr. Sub-Inspector could not be dispensed with and petitioner was asked to pass S.S.C. examination. It is also stated that the General Body of the respondent Corporation has no power to select or appoint any employee on the post of Sr. Sub-Inspector. Section 54 of the Act, provides for prescribed procedure for selection and that section empowers power for promotion. The resolution was passed by the respondent Corporation when it was going to be dissolved on 30-6-1984. In the present case, there was no recommendation for selection by the Selection Committee or Commissioner. Hence, the resolution dated 29-6-1983 was not legal and in accordance with law and the administrator was fully justified in not giving effect to the said resolution. It is also denied that the petitioner was legally appointed on the post of Sr. Sub-Inspector and the petitioner was not holding requisite qualification and therefore in the absence of requisite qualification he was not entitled for promotion on the post of Sr. Sub-Inspector.

7. Rejoinder affidavit has also been filed by the petitioner wherein it is stated that the petitioner was asked for performing additional work and the Municipal Commissioner made proposal for promotion to the petitioner to the post of Sr. Sub-Inspector. The Standing Committee passed the resolution No. 466 dated 7-12-1981 for creating the post of Sr. Sub-Inspector and for determining its qualifications. The respondent Corporation accordingly made a proposal for creating the post of Sr. Sub-Inspector on 30-9-1983. The Standing Committee passed the resolution dated 11-1-1984 approving the said proposal and sent it to the General Body and thereupon the General Body passed resolution dated 1-3-1984 approving the creation of the post of Sr. Sub-Inspector. The general body of the respondent Corporation passed resolution no. 402 dated 20-3-1984 stating the petitioner's work is satisfactory and he should be appointed or promoted to the post of Sr. Sub-Inspector without insisting requisite qualification and the Beneral Body passed the resolution dated 29-6-1984 for appointment of the petitioner on the post

of Sr. Sub-Inspector without insisting requisite qualification. It was also stated that the General Body or the administrator have not modified or cancelled the resolution dated 29-6-1984. As such, that resolution has to be given effect. The Standing Committee passed the further resolution on 5-12-1995 to appoint the petitioner on the post of Sr. Sub-Inspector. Ultimately, the petitioner was appointed on the post of Sr. Sub-Inspector by the Commissioner of the respondent Corporation on 27-10-1997 and that order was also cancelled on 10-9-1998. The Standing Committee of the respondent Corporation is higher authority than the Commissioner and once this Standing Committee has passed the resolution and the same was approved by the General Body the Commissioner of the respondent Corporation was required to implement the said resolution passed by the Standing Committee and appoint the petitioner on the post of Sr. Sub-Inspector.

8. Heard the learned counsel for the parties and perused the material on record.

9. Mr. Nanavati learned Sr. Counsel for the respondent Corporation contended that the term of the General Body was to expire on 30-6-1984 and the General Body passed the resolution on 29-6-1984 for appointment of the petitioner on the post of Sr. Sub-Inspector without insisting requisite educational qualification. After expiry of the term of the General Body on 30-6-1984 the administrator was appointed and the administrator has power u/s 7-A (2) of the Act that all powers and duties of the Municipal authorities (except the Municipal Commissioner and the Transport Manager) charged with carrying out the provisions of this Act and the Corporation under any other law for the time being in force shall be exercised and performed by the administrator. Thus, the administrator was fully competent to pass any order in respect of the appointment of the petitioner on the post of Sr. Sub-Inspector. The matter regarding impugned appointment of the petitioner on the aforesaid post was reconsidered by the administrator having all the powers and duties of the municipal authorities and found that the petitioner was not holding requisite qualification as per resolution no. 132 dated 2-2-1982, wherein the qualification for recruitment to the post of Sr. Sub-Inspector have been provided. In that resolution the candidates are required to have passed S.S.C. examination and in the present case the petitioner had not passed the S.S.C. examination at the relevant time and hence the administrator passed the order advising the petitioner to

pass S.S.C. examination for being qualified for the post of Sr. Sub-Inspector as claimed by him.

10. I have considered the contentions of the learned counsel for the parties. I am of the view that the administrator of the respondent Corporation has not committed any error and the matter was reconsidered by the administrator on 5-9-1984 and he took the decision that the requisite educational qualification for the post of Sr. Sub-Inspector cannot be dispensed with in view of the resolution dated 2-2-1984 and the petitioner was asked to pass S.S.C. examination for being qualified for the post of Sr. Sub-Inspector as claimed by the petitioner. However, for the appointment or selection of any officer/employee of the respondent Corporation Section 54 of the Act provides manner of making appointments that there shall be a Staff Selection Committee consisting of the Commissioner or any other officer designated by him in this behalf, the Municipal Chief Auditor, the Head of the Department concerned and not more than one other officer nominated by the Commissioner and Staff Selection Committee is required to make appointments in the municipal service, appointments of the candidates so selected will have to be made in accordance with directions given by the Staff Selection Committee.

12. In the present case, the petitioner was not selected by any Staff Selection Committee and the resolution passed by the General Body of the respondent Corporation on 29-4-1984 appointing the petitioner on the post of Sr. Sub-Inspector was not in consonance of the provisions of law. As such, the impugned resolution sought to be implemented cannot be implemented in accordance with law.

13. In view of the above, I do not find any merit in this petition. Therefore, the petition deserves to be dismsised. Accordingly, this petition is dismissed with no order as to costs. Rule is discharged with no order as to costs.

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/JVSatwara/